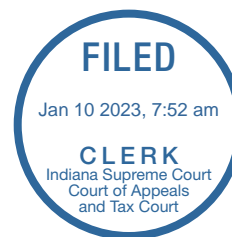


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

R.P. and D.P.,
Appellants-Petitioners,

v.

A.W. and K.H.,
Appellees-Respondents

January 10, 2023
Court of Appeals Case No.
22A-AD-1862
Appeal from the
Jasper Superior Court
The Honorable
Russell D. Bailey, Judge
Trial Court Cause No.
37D01-2111-AD-23

Vaidik, Judge.

Case Summary

- [1] R.P. and D.P. appeal the trial court's denial of their petition to adopt their grandson. We affirm.

Facts and Procedural History

- [2] A.W. (“Mother”) and K.H. (“Father”) are the biological parents of E.W.-H. (“Child”), who was born in April 2011. Child has lived with his paternal grandparents, R.P. and D.P. (“Grandparents”), at least since he was two years old. Father has struggled with drugs and has been incarcerated a couple of times throughout this case. Mother lived in Michigan until October 2020, when she moved to Indiana.
- [3] In 2019, Grandparents were appointed guardians of Child. *See* Cause No. 37D01-1905-GU-495.¹ In November 2021, Grandparents petitioned to adopt Child, alleging that Mother and Father had failed to communicate significantly with Child for at least one year and therefore their consent to adoption is not required under Indiana Code section 31-19-9-8.
- [4] A hearing on the adoption petition was held in May 2022. Grandparents submitted exhibits detailing Mother’s and Father’s contacts with Child from 2019 to 2022. The exhibits reflect that Mother had these contacts with Child:

January 25, 2020 Attended basketball game

February 2, 2021 Texted Child

February 3, 2021 At house with Child for two hours

February 14, 2021 At house with Child for two hours

¹ The guardianship proceedings, including Mother’s motion to modify parenting time, have been stayed pending resolution of this appeal.

May 6, 2021	Texted Grandmother
June 4, 2021	At campground with them for 1 hour
July 9, 2021	Texted Child
July 13, 2021	At house with Child for 2 hours
July 22, 2021	At campground with them
July 23, 2021	Left campground at 7:30 a.m.
August 17, 2021	Attended Meet the Teacher Night for 35 minutes
March 31, 2022	Texted Child for his birthday
April 1, 2022	Texted and visited from 6 to 8:30 p.m.
May 12, 2022	Texted Child that she sent him \$150

Appellants' App. Vol. II p. 54. The exhibits reflect that Father had these contacts with Child:

January 2019 to September 30, 2019	Father was incarcerated
October 7 to December 4, 2019	Father lived with Child and Grandparents
December 25, 2019	Visited house with Child for 3 hours.
January 2, 9, 16, 23, 2020	Attended Dr. appt. with Grandfather and Child for Child's broken arm
January 25, 2020	Attended basketball game
February 13, 2021	At house for 1 hour
March 27, 2021	At house for 30 minutes
April 3, 2021	At Child's birthday party for 1 hour

June 5, 2021	At campground for 4 hours; 1 hour with Child
July 9, 2021	At house for 15 minutes
July 13, 2021	At house for 1 hour
August 28, 2021	At house for 30 minutes
October 2, 2021	At house for 1 hour
January 23, 2022 ²	Called house
March 5, 2022	Called house
April 3, 2022	Called Child

Id. at 54-55. In addition to the exhibits, the parties testified about Mother’s and Father’s contacts with Child.

[5] In July 2022, the trial court issued an order denying Grandparents’ petition to adopt Child. The court made the following findings, which Grandparents do not challenge on appeal:

If the [exhibits] showing the minimal, sparse contact of Mother and Father with [Child] were a complete and accurate record of the contacts that were made regarding [Child], [Grandparents] would be correct in their argument that parental consent is not necessary for this adoption. . . . However, the Court also finds that the [exhibits] do not reflect all of the contacts that the Mother and Father made to Grandparents. [Grandmother] testified that she did not include all contacts and that Mother would contact her on a regular basis via text. Mother testified to

² Father was incarcerated in January 2022. At the time of the hearing in May 2022, he was expected to be released in July. *See* Tr. p. 166.

94 texts in 2020 and 57 texts in 2021. By Mother’s admission, she stated that about 20-30% of the texts were about [Child]. While [Grandmother] testified that she did not know how many texts were sent, she did acknowledge that Mother had sent texts. Also, [Grandmother] testified that Mother saw [Child] around 12 times in 2021 and that she did not record the content of the interactions when Mother would visit, but she kept the time to show how little interaction there was with [Child]. [Grandmother] also testified that there are contacts with Mother and Father that were not included on the exhibits. Therefore, the Court finds that the evidence presented by [Grandparents] regarding the contacts of Mother and Father is not credible to the extent that there were more contacts than those listed on the exhibits and they do not reflect all efforts made by Mother and Father to communicate with [Child].

Id. at 55-56. The court also found that Grandparents “controlled the visitation.”

Id. at 58. The court acknowledged that Grandparents had provided “a stable, nurturing home for [Child] for the past ten years and [had] done everything for him that his parents should have done.” *Id.* at 57. That said, the court found that Mother’s and Father’s contacts with Child were significant. Accordingly, the court concluded that Grandparents had “failed to carry the burden of proof on showing that the consent is unnecessary” under Section 31-19-9-8. *Id.*

[6] Grandparents now appeal.

Discussion and Decision

[7] We first note that Mother and Father have not filed briefs. When an appellee does not respond to an appeal, we will not undertake the burden of developing

an argument on their behalf. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court’s judgment if the appellant’s brief presents a case of prima facie error. *Id.* In this context, “prima facie error” means error “at first sight, on first appearance, or on the face of it.” *Id.*

[8] Grandparents contend the trial court erred in denying their petition to adopt Child. We give “considerable deference” to the trial court’s decision in family-law matters “because we recognize that the trial judge is in the best position to judge the facts, determine witness credibility, get a feel for the family dynamics, and get a sense of the parents and their relationship with their children.” *In re Adoption of I.B.*, 163 N.E.3d 270, 274 (Ind. 2021) (quotation omitted). “So, when reviewing an adoption case, we presume that the trial court’s decision is correct, and the appellant bears the burden of rebutting this presumption.” *Id.* (quotation omitted). “And we will not disturb that decision unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion.” *Id.* (quotation omitted). We will not reweigh evidence or assess witness credibility. *Id.* Rather, we examine the evidence in the light most favorable to the trial court’s decision. *Id.*

[9] “A natural parent enjoys special protection in any adoption proceeding, and courts strictly construe our adoption statutes to preserve the fundamentally important parent-child relationship.” *Id.* Generally, a trial court may grant an adoption petition only if both parents consent. *See* Ind. Code § 31-19-9-1(a)(2). However, parental consent may be dispensed with under “carefully enumerated

circumstances.” *I.B.*, 163 N.E.3d at 274. Section 31-19-9-8(a) provides consent is not required from:

(2) A parent of a child in the custody of another person if for a period of at least one (1) year the parent:

(A) fails without justifiable cause to communicate significantly with the child when able to do so

The petitioner must prove the parent’s consent is unnecessary by clear and convincing evidence. *I.B.*, 163 N.E.3d at 274 (citing I.C. §§ 31-19-10-0.5, -1.2(a)).

[10] Grandparents argue the trial court erred in determining they did not prove by clear and convincing evidence that for at least one year Mother and Father failed without justifiable cause to communicate significantly with Child when able to do so under Section 31-19-9-8(a)(2)(A).³ “A determination on the significance of the communication is not one that can be mathematically calculated to precision.” *Id.* at 276 (quotation omitted). Indeed, “[e]ven multiple and relatively consistent contacts may not be found significant in context.” *Id.* (quotation omitted). But “a single significant communication within one year is sufficient to preserve a non-custodial parent’s right to consent to the adoption.” *Id.* (quotation omitted).

³ Grandparents make a passing allegation that Mother and Father abandoned Child under Section 31-19-9-8(a)(1). However, they do not develop this argument and have therefore waived it.

[11] In support of their argument, Grandparents rely on *Rust v. Lawson*, 714 N.E.2d 769 (Ind. Ct. App. 1999), *trans. denied*.⁴ But we find that *Rust* is readily distinguishable. There, the biological father “failed to visit with [his son] or even request to see his son from October, 1995, until July, 1997, a period of approximately twenty-two (22) months.” *Id.* at 773. In affirming the trial court’s determination that the biological father had failed to communicate significantly with his son for at least one year, we noted that “it [was] hard to believe that [the biological father] was incapable of even communicating **once** with [his son] for twenty-two months.” *Id.* (emphasis added). These facts are simply not present here. The trial court found that Mother and Father had not only the contacts listed on the exhibits but other contacts on well. *Rust*, which involved no communication for twenty-two months, does not control here.

[12] As the trial court acknowledged, Mother’s and Father’s contacts with Child have been “far from that necessary to adequately raise a child.” Appellants’ App. Vol. II p. 58. But given the stakes at issue and deference afforded to trial courts in adoption cases, we agree with the court that those contacts are enough to preserve Mother’s and Father’s right to consent to the adoption of Child. *See I.B.*, 163 N.E.3d at 276. The court did not err in concluding that Grandparents did not prove by clear and convincing evidence that for at least one year Mother

⁴ Grandparents also rely on *In re Adoption of E.B.*, 163 N.E.3d 931 (Ind. Ct. App. 2021). But that case deals with Section 31-19-9-8(a)(2)(B) (“knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree”), not Section 31-19-9-8(a)(2)(A), which is at issue here.

and Father failed without justifiable cause to communicate significantly with Child when able to do so.

[13] Affirmed.

Riley, J., and Bailey, J., concur.